

House Bill 578 (COMMITTEE SUBSTITUTE)

By: Representatives Ralston of the 7th, Fleming of the 117th, Bearden of the 68th, and Lunsford of the 110th

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 14 of Title 9 of the Official Code of Georgia Annotated, relating to habeas corpus procedure for persons under sentence of state court of record, so as change certain provisions relating to petitions challenging for the first time state court proceedings resulting in a death sentence; to provide for procedural time frames for petitions challenging for the first time state court proceedings resulting in a death sentence; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 14 of Title 9 of the Official Code of Georgia Annotated, relating to habeas corpus procedure for persons under sentence of state court of record, is amended by revising Code Section 9-14-47.1, relating to petitions challenging for the first time state court proceedings resulting in a death sentence, as follows:

"9-14-47.1.

(a) In petitions filed under this article challenging for the first time state court proceedings resulting in a death sentence, the provisions of this article shall apply except as specifically provided otherwise in this Code section.

(b) Within ten days of the filing of a petition challenging for the first time state court proceedings resulting in a death sentence, the superior court clerk of the county where the petition is filed shall give written notice to The Council of Superior Court Judges of Georgia of the filing of the petition which shall serve as a request for judicial assistance under paragraph (3) of subsection (b) of Code Section 15-1-9.1. Within 30 days of receipt of such notice, the president of the council shall, under guidelines promulgated by the executive committee of the council, assign the case to a judge of a circuit other than the circuit in which the conviction and sentence were imposed.

(c) After the close of evidence and the filing of the transcript of any evidentiary hearings, the petitioner shall have 90 days in which to file any brief and, if directed by the court,

shall file proposed findings of fact and conclusions of law. The respondent shall file any responsive brief and, if directed by the court, proposed findings of fact and conclusions of law, within 60 days of the filing of the petitioner's brief. The petitioner shall have ten days from the filing of the respondent's brief to file any reply brief. Upon a showing of good cause, the court may grant either party an extension of time, not to exceed 60 days, for filing briefs or orders.

(d) The judge of the superior court hearing the case shall make written findings of fact and conclusions of law and such findings shall be filed within 180 days of the filing of either the respondent's brief or proposed order or the filing of the petitioner's reply brief, whichever is later. If the findings of fact and conclusions of law of the judge are not filed within such time frame, the judge shall file a report in the superior court of the county where the case is pending setting forth with specificity the reasons for the delay and shall submit a copy of such report to the clerk of the Supreme Court of Georgia and the parties. Every 30 days thereafter until the order is filed, the judge shall provide an updated status report to the superior court clerk, the clerk of the Supreme Court of Georgia, and the parties setting forth the reasons for the delay.

~~(c)~~(e) The Council of Superior Court Judges of Georgia shall establish, by uniform court rules, appropriate time periods and schedules applicable to petitions filed ~~on or after January 1, 1996,~~ challenging for the first time state court proceedings resulting in a sentence of death. ~~Such rules shall be adopted by the Supreme Court of Georgia on or before December 31, 1995. Such new~~ Except as otherwise provided in this Code section, such time periods and schedules shall include, but specifically not be limited to, the following:

- (1) Respondent's filing of an answer or motion to dismiss the petition;
- (2) Petitioner's filing of any amendments to the petition;
- (3) Filing by either party of motions and responses to motions; and
- (4) Scheduling and conducting of evidentiary hearings; ~~and~~
- ~~(5) Date of final order.~~

~~(d)~~(f) In petitions filed under this article challenging for a second or subsequent time a state court proceeding resulting in a death sentence, the petitioner shall not be entitled to invoke any of the provisions set forth in this Code section to delay the proceedings. To the extent the court deems it necessary to have an evidentiary hearing on any such petition, the court shall expedite the proceedings and the time limits shall not exceed those set for initial petitions."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.